

2 Ct  
propo.

19  
10/31/01  
nh

**ORIGINAL**  
**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

BARBARA E. VARNER,

*Plaintiff,*

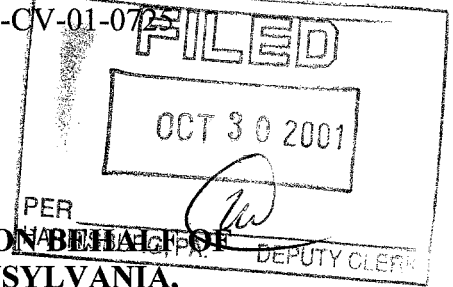
vs.

COMMONWEALTH OF PA, *ET AL.*,

*Defendants*

CIVIL ACTION

*Judge Kane*  
NO. 01-CV-01-0725



**MOTION FOR SUMMARY JUDGMENT FILED ON BEHALF OF**  
**DEFENDANT COMMONWEALTH OF PENNSYLVANIA,**  
**NINTH JUDICIAL DISTRICT**

**NOW COMES DEFENDANT**, Commonwealth of Pennsylvania, Ninth Judicial District, and, pursuant to Rule 56, F.R.C.P., moves this Honorable Court for Summary Judgment, averring in support thereof, as follows:

1. Plaintiff's federal claims against the Commonwealth of Pennsylvania, Ninth Judicial District, are barred because such claims were untimely brought to the EEOC.

WHEREFORE, Court Defendant requests this Honorable Court to grant judgment in its favor and against Plaintiff, for the above-stated reasons, more fully set forth in the accompanying Brief.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "A. Taylor Williams".

A. TAYLOR WILLIAMS, ESQUIRE  
Attorney I.D. No. 33149  
Administrative Office of PA Courts  
1515 Market Street, Suite 1414  
Philadelphia, PA 19102  
215-560-6300

***Counsel for Defendant, the Commonwealth  
of Pennsylvania, Ninth Judicial District***

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BARBARA E. VARNER,

*Plaintiff,*

vs.

COMMONWEALTH OF PA, *ET AL.*,

*Defendants*

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

CIVIL ACTION

NO. 01-CV-01-0725

**BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT FILED ON  
BEHALF OF DEFENDANT COMMONWEALTH OF PENNSYLVANIA,  
NINTH JUDICIAL DISTRICT**

**I. INTRODUCTION**

Plaintiff, Barbara Varner (hereinafter, "Plaintiff"), has brought the instant suit against Defendants Commonwealth of Pennsylvania Ninth Judicial District ("Court Defendant"), Cumberland County ("County Defendant"), and two individuals ("Individual Defendants") claiming she was sexually harassed and retaliated against in violation of Title VII. As Plaintiff alleges in her Complaint, Court Defendant is a "District of the judicial branch of the Commonwealth of Pennsylvania," located in Cumberland County (Complaint, ¶ 2).

Pursuant to a subpoena served on the EEOC by Plaintiff's Counsel, the EEOC produced the record of the underlying administrative proceedings. The relevant portions of the EEOC record are attached as exhibits hereto; the record evidences the following facts.

1. The EEOC charge itself indicates that the charge against Court Defendant (EEOC number 170990490), was initially received by the EEOC on 1/07/1999 and transmitted to Defendant Court on 2/26/99. (Exhibit A.) The charge specifically alleged that the most recent incident of discrimination or harassment occurred on 5/26/98.

2. The EEOC computerized intake sheet indicates that the charge (EEOC number 170990490), against Court Defendant was initially received by the EEOC on 1/07/1999, 226 days after the last alleged discriminatory incident. (Exhibit B).

3. The handwritten caselog (Exhibit C) indicates that on 1/07/99, the EEOC received and docketed the signed charge. This handwritten caselog does not include the charge number, the respondent or the charging party, however, the date contained therein corresponds with the computerized EEOC intake sheet for EEOC charge number 170990490, which names Court Defendant as respondent.

4. On June 16, 1997, more than a year and a half before filing her charge against Court Defendant, Plaintiff spoke by telephone with Joanne Hetzel, a representative of the Pennsylvania Human Relations Commission ("PHRC"). This telephone conversation was memorialized in a letter addressed to Plaintiff and dated June 16, 1997 (Exhibit D.) The letter from the PHRC representative advises Plaintiff that Plaintiff is "an Officer of the Court, and, further, that the PHRC "do[es] not have jurisdiction over the employees of the various court systems of Pennsylvania due to a court ruling." The letter, further, advised Plaintiff to contact the EEOC.

5. After the telephone conversation with the PHRC representative on June 16, 1997, Plaintiff filed an EEOC charge against Cumberland County (Charge Number 170981689), docketed by the EEOC on 8/24/98.) (Exhibit E) Plaintiff did not, however, file a charge against the Court Defendant until she filed the charge referenced in paragraph 1 above (Exhibit A), which was initially received by the EEOC on 1/07/1999, 226 days following the last alleged discriminatory incident.

## II. ISSUE PRESENTED

Whether Plaintiff's federal claims against the Commonwealth of Pennsylvania, Ninth Judicial District of Pennsylvania, are barred because such claims were untimely brought to the EEOC?

## III. ARGUMENT

### A. **PLAINTIFF'S TITLE VII COMPLAINT IS TIME-BARRED FOR FAILURE TO FILE HER EEOC COMPLAINT WITHIN 180 DAYS OF THE LAST ALLEGED INCIDENT OF DISCRIMINATION.**

The underlying EEOC record clearly shows that Plaintiff filed her charge of discrimination against the Court Defendant on 1/07/1999. See Charge of Discrimination, Exhibit A, and EEOC Intake Record, Exhibit B. Plaintiff's EEOC charge specifically alleged that the most recent incident of discrimination or harassment occurred on 5/26/98. The difference between the date of the last alleged violation and the EEOC charge is 226 days. The charge against the Court Defendant, filed 226 days after the alleged unlawful employment practice, is untimely, and this subsequent federal suit must be dismissed because Plaintiff failed to timely file her administrative charge of discrimination.

#### 1. **PLAINTIFF FILED HER CHARGE OF DISCRIMINATION OUTSIDE THE PERMISSIBLE 180-DAY TIME PERIOD FOR THE FILING OF SUCH CHARGES AGAINST A COMPONENT OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA.**

Timely filing of a charge of discrimination with the Equal Employment Opportunity Commission is a prerequisite to filing a Title VII of the Civil Rights Act of 1964 complaint in federal court. 42 U.S.C.S. @ 2000e-5(b).

Under Title VII, allegations of sexual harassment discrimination or retaliation, such as those made by Plaintiff, must first be filed with the Equal Employment Opportunity Commission, ("EEOC"), by filing a Charge of Discrimination with that agency. 42 U.S.C.

§2000e-5(e). A Title VII plaintiff must file the Charge of Discrimination with the EEOC within 180 days of the alleged unlawful employment practice, or within 300 days if the charge is first made with the state fair employment practices agency. *Id.* If charges are not timely filed with the EEOC, they may not be considered by this Court. United Airlines v. Evans, 431 U.S. 553, 554-55 (1977); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 798 (1973); 29 C.F.R. § 1601.28(e)(1) (2000).

In this case, the EEOC record shows that Plaintiff filed her Charge of Discrimination against the Court Defendant with the EEOC on 1/07/1999, 226 days after the last alleged incident of discrimination. See Exhibit A. Ordinarily, in a state which has a state fair employment practices agency, a complainant has 300 days to file a charge with the EEOC. However, Plaintiff's administrative charge is untimely filed because recent caselaw dictates that, where the state fair employment practices agency has no jurisdiction to process claims, only those claims arising within 180 days of the filing of the EEOC charge are viable.

The Pennsylvania fair employment practices agency (FEP) is the Pennsylvania Human Relations Commission, 29 C.F.R. § 1601.74. However, the Pennsylvania Supreme Court has ruled that the PHRC has no subject matter jurisdiction over discrimination or harassment claims against the state judiciary. The law is concisely explained in a recent Eastern District case.

In Benn v. First Judicial District of Pennsylvania, 2000 U.S. Dist. LEXIS 6659 (E.D.Pa. 2000), Judge Robreno found that, because the Pennsylvania Human Relations Commission lacks jurisdiction over claims against the First Judicial District, employees of the District must file their charge with the EEOC within 180 days of the alleged unlawful employment practice. Judge Robreno stated, *Id.* at \*\* 5,6,7:

Because Pennsylvania is a deferral state with a work sharing agreement, generally, even if an employee does not file a charge with the state agency, the

employee is entitled to the full 300 days in which to file a charge with the EEOC. [citations omitted].

Plaintiff, as a probation officer, however, was a court employee. The Pennsylvania Supreme Court has held that it would offend the separation of powers doctrine to allow the PHRC to decide whether plaintiff's Title VII claims were viable. See First Judicial Dist. v. Pennsylvania Human Relations Comm'n, 556 Pa. 258, 727 A.2d 1110, 1112 (Pa. 1999) (involving sexual harassment complaint by probation officer of First Judicial District and holding that PHRC "has no jurisdiction, because of the separation of powers doctrine, to adjudicate any complaints against the judicial branch"); see also Court of Common Pleas of Erie County v. Pennsylvania Human Relations Comm'n, 546 Pa. 4, 682 A.2d 1246, 1247-1249 (Pa. 1996) (affirming Commonwealth Court's decision that, under the separation of powers doctrine, PHRC cannot interfere with judicial function of discharging court personnel, specifically a juvenile probation officer). Thus, there is no "State or local agency with authority to grant or seek relief" with respect to plaintiff's ADA claims, so plaintiff is only entitled to 180 days in which to file a charge. See 29 C.F.R. §1601.13(a)(2) ("A jurisdiction having an FEP agency without subject matter jurisdiction over a charge (e.g., an agency which does not cover sex discrimination or does not cover nonprofit organizations) is equivalent to a jurisdiction having no FEP agency. Charges over which a FEP agency has no subject matter jurisdiction are filed with the Commission upon receipt and are timely filed if received by the Commission within 180 days from the date of the alleged violation."); see also Settecase v. Port Auth. of N.Y. & N.J., 13 F. Supp. 2d 530, 533-35 (S.D.N.Y. 1998).

All of the allegations in Plaintiff's EEOC complaint occurred more than 180 days before the EEOC filing date of 1/07/99, and thus, are beyond the statutory period and barred as "not timely filed" with the EEOC. See Jones v. WDAS FM/AM Radio Stations, 74 F.Supp.2d 455, 462. (E.D. PA 1999). Plaintiff's federal Complaint also alleges continuing retaliation. However, Plaintiff's allegations of retaliation are barred for failure to exhaust her administrative remedies. No additional EEOC charge was filed specifically alleging the retaliation claimed in the Complaint. Moreover, the status of the retaliation claim as a "continuing violation" is dependent on the viability of the original filing with the EEOC, therefore the retaliation claim, must also be dismissed. Barrow v. New Orleans Steamship Ass'n, 932 F. 2d 473 (5<sup>th</sup> Cir. 1991) (retaliation charge must have a timely charge upon which to attach itself).

## 2. EQUITABLE TOLLING IS NOT APPROPRIATE

In extraordinary cases, the filing period with the EEOC may be tolled. Equitable tolling may be appropriate: 1) where the defendant has actively misled the plaintiff respecting plaintiff's cause of action; 2) where the plaintiff in some extraordinary way has been prevented from asserting his or her rights; or 3) where the plaintiff has timely asserted his or her rights mistakenly in the wrong forum. Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F. 3d 1380, 1387 (3d Cir 1994). None of these factors exist in the instant case. Moreover, due diligence is required to preserve an equitable tolling claim; that is, equitable tolling is only available if the plaintiff has exercised due diligence. See Irwin v. Department of Veterans Affairs, 498 U.S. 89, 96 (1990); Robinson v. Dalton, 107 F. 3d 1018, 1023 (3rd Cir. 1997). To benefit from the equitable tolling doctrine, a plaintiff must establish that she could not have discovered the essential factual information bearing on her claim by the exercise of reasonable diligence. Oshiver, 38 F.3d at 1390. "The plaintiff who fails to exercise this reasonable diligence . . . loses the benefit of" the equitable tolling doctrine. Id.

The EEOC record proves that Plaintiff knew, as early as June 16, 1997, that Plaintiff is "an Officer of the Court, and, further, that the PHRC "do[es] not have jurisdiction over the employees of the various court systems of Pennsylvania due to a court ruling," because Ms. Hetzel, the representative of the PHRC, gave Plaintiff this information in a telephone conversation, and memorialized the conversation in a letter that same date. (Exhibit D.) The letter, further, advised Plaintiff to contact the EEOC. Nonetheless, thereafter, Plaintiff filed an EEOC Complaint naming the County of Cumberland, a separate branch of local government. The EEOC caselog later noted that the charge against the County named the "incorrect



respondent."<sup>1</sup> (EEOC Caselog, Exhibit C.)

The facts, therefore, show that Plaintiff did not file an EEOC charge against the Court Defendant until one and one half years following her initial conversation with and letter from the PHRC, advising her to go to the EEOC because she is an "Officer of the Court," and that the PHRC can not take jurisdiction over "employees" of the "court systems of Pennsylvania."

Plaintiff filed a Complaint against Cumberland County in 1998. At the time of the 1998 filing, Plaintiff had legal counsel, at least as early as August 1998. Counsel wrote a letter dated August 7, 1998 (Exhibit G), in which Counsel transmitted "corrections and additions" to the draft charge. Counsel's letter specifically stated:

"Please note that 'Cumberland County' is the employer."

Counsel further stated, "I have had my client sign the form requesting dual filing which is enclosed. You know, however, that this is where we started and the PHRC declined jurisdiction."

Thus, Plaintiff had legal representation during the 180-day period, and filed the charge against the County Defendant with the assistance of counsel. Plaintiff and her counsel knew that the PHRC had declined jurisdiction, but never filed a timely charge against the Court Defendant. This is true even though Counsel's letter references the denial of jurisdiction and the PHRC's letter clearly explained that PHRC jurisdiction was denied because Plaintiff is a Court employee. These facts, too, mitigate against equitable tolling, because equitable tolling is less appropriate when the litigant is not inexperienced nor proceeding *pro se*. Kocian v. Getty Refining & Marketing Co., 707 F. 2d 748, 753, 755 (3rd Cir. 1983).

---

<sup>1</sup> The Caselog for the EEOC charge against Court Defendant also notes that the claim against the county, docketed at Charge No. 170981689, has been dismissed for LJ (lack of jurisdiction). Exhibit C. The caselog in the charge against the County indicates also that CP (Charging Party) "is not employed by Resp. (Respondent, Cumberland County). Exhibit E. However, although the EEOC originally intended to dismiss that claim against the County for lack of jurisdiction, it did not actually do so. See Determination as to Charge Number 170981689, against County Defendant, Exhibit F.



Plaintiff's failure to heed the advice given by the PHRC that she was an employee of Court Defendant, and that her claim could not be processed by the PHRC, but only by the EEOC, displays a lack of due diligence; to allow a plaintiff to successfully invoke equitable tolling in such circumstances would convert "a remedy available only sparingly and in extraordinary situations into one that can be readily invoked by those who have missed carefully drawn deadlines." Robinson v. Dalton, *supra*, at 1023.

Plaintiff did not timely file a charge against Court Defendant with the EEOC. No extraordinary circumstance prevented Plaintiff from timely filing her charge with the EEOC as to Court Defendant. Indeed, the PHRC advised her in June 1997 that she was a Court employee whose claims could only be processed by the EEOC and not the PHRC. Plaintiff simply failed to use due diligence to timely file the required charge against the Court Defendant. Thus, there are no factors that would trigger the application of the doctrine of equitable tolling, and Court Defendant's Motion should be granted.

#### IV. CONCLUSION

Because Plaintiff did not file a timely EEOC charge against the Court Defendant, none of the allegations against Court Defendant contained in Plaintiff's Complaint may be considered by this Court.

Moreover, Plaintiff, as a matter of law, is not entitled to equitable tolling. The filing of a charge with the EEOC is a jurisdictional prerequisite to a judicial complaint. Waiters v. Parsons, 729 F. 2d 233, 237 (3rd Cir. 1984). Because the administrative prerequisites to filing this lawsuit have not been timely met, summary judgment must be granted as to the case against Court Defendant.

Respectfully submitted,



A. TAYLOR WILLIAMS, ESQUIRE

Attorney I.D. No. 33149

Administrative Office of PA Courts

1515 Market Street, Suite 1414

Philadelphia, PA 19102

215-560-6300

*Counsel for Defendant, the Commonwealth  
of Pennsylvania Ninth Judicial District*

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BARBARA E. VARNER,

*Plaintiff,*

vs.

COMMONWEALTH OF PA, *ET AL.*,

*Defendants*

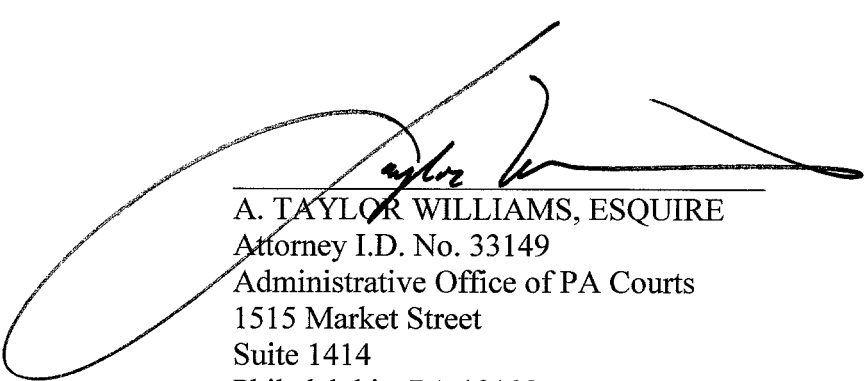
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

CIVIL ACTION

NO. 01-CV-01-0725

**CERTIFICATE OF CONCURRENCE and NONCONCURRENCE**

Undersigned counsel contacted Counsel for Plaintiff and Counsel for Defendant County by electronic mail (e-mail). Debra Wallet, Esquire, Plaintiff's counsel, does not concur in this Motion. Paul Dellasega, Esq., Counsel for the County of Cumberland, does concur this Motion.



A. TAYLOR WILLIAMS, ESQUIRE  
Attorney I.D. No. 33149  
Administrative Office of PA Courts  
1515 Market Street  
Suite 1414  
Philadelphia, PA 19102  
215-560-6300

*Counsel for Defendant, the  
Commonwealth of Pennsylvania  
Ninth Judicial District*

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BARBARA E. VARNER,

*Plaintiff,*

vs.

COMMONWEALTH OF PA, *ET AL.*,

*Defendants*

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

CIVIL ACTION

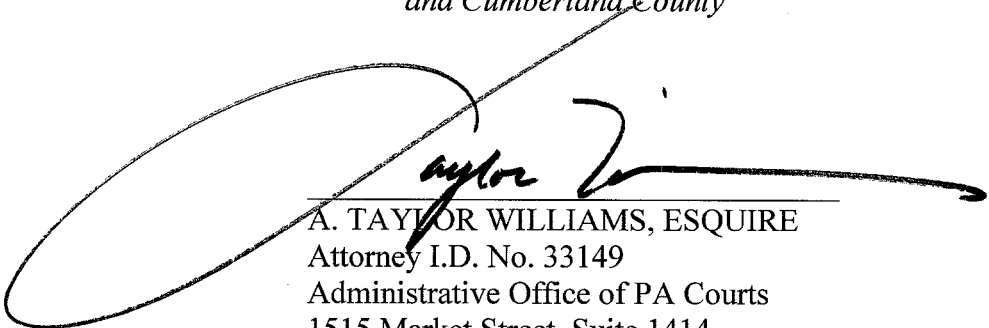
NO. 01-CV-01-0725

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on October 29, 2001, she personally caused to be served upon the following a true and correct copy of the foregoing *Motion For Summary Judgment and Brief in Support thereof, filed on behalf of Court Defendant, Commonwealth of Pennsylvania, Ninth Judicial District*, by mailing same first class, postage pre-paid, U.S. mail to:

Debra Wallet, Esquire  
24 North 32<sup>nd</sup> Street  
Camp Hill, PA 11701  
*Attorney for Plaintiff*

Paul J. Dellasega, Esquire  
*Thomas, Thomas & Hafer, LLP*  
305 North Front Street, 6<sup>th</sup> Floor  
POB 999  
Harrisburg, PA 17108-0999-0999  
*Attorneys for Graham, Osenkarski  
and Cumberland County*



A. TAYLOR WILLIAMS, ESQUIRE  
Attorney I.D. No. 33149  
Administrative Office of PA Courts  
1515 Market Street, Suite 1414  
Philadelphia, Pennsylvania 19102  
(215) 560-6300

*Counsel for Defendant, the Commonwealth  
of Pennsylvania, Ninth Judicial District*

Exh A

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. George E Hoffer  
President/Judge  
Common Pleas Ct Of Cumberland Cty.  
One Courthouse Square  
Carlisle, PA 17013

## PERSON FILING CHARGE

Varner, Barbara E

## THIS PERSON (check one)

☒ CLAIMS TO BE AGGRIEVED☐ IS FILING ON BEHALF OF ANOTHER

## DATE OF ALLEGED VIOLATION

Earliest

Most Recent

11/20/1996

05/26/1998

## PLACE OF ALLEGED VIOLATION

Carlisle, PA

## CHARGE NUMBER

170990490

## NOTICE OF CHARGE OF DISCRIMINATION

(See EEOC "Rules and Regulations" before completing this Form)

You are hereby notified that a charge of employment discrimination has been filed against your organization under:

☒ TITLE VII OF THE CIVIL RIGHTS ACT OF 1964☒ THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967☐ THE AMERICANS WITH DISABILITIES ACT☐ THE EQUAL PAY ACT (29 U.S.C. SECT. 206(d)) investigation will be conducted concurrently with our investigation of this charge.

The boxes checked below apply to your organization:

1. ☒ No action is required on your part at this time.
2. ☒ Please submit by 4/12/99 a statement of your position with respect to the allegation(s) contained in this charge, with copies of any supporting documentation. This material will be made a part of the file and will be considered at the time that we investigate this charge. Your prompt response to this request will make it easier to conduct and conclude our investigation of this charge.
3. ☒ Please respond fully by 4/12/99 to the attached request for information which pertains to the allegations contained in this charge. Such information will be made a part of the file and will be considered by the Commission during the course of its investigation of the charge.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Philadelphia District Office  
The Bourse, Suite 400  
21 S. Fifth Street  
Philadelphia, PA 19106-2515

Howard Gurmankin, Supervisor  
(Commission Representative)

(215) 451-5740

(Telephone Number)

☒ Enclosure: Copy of Charge

## BASIS OF DISCRIMINATION

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NAT. ORIGIN ☒ AGE ☐ DISABILITY ☒ RETALIATION ☐ OTHER

## CIRCUMSTANCES OF ALLEGED VIOLATION

See enclosed Form 5, Charge of Discrimination.

DATE

2/26/99

TYPED NAME/TITLE OF AUTHORIZED EEOC OFFICIAL

Marie M. Tomasso

SIGNATURE

*Marie M. Tomasso*

This form is affected by the Privacy Act of 1974; See Privacy Act Statement completing this form.

☒ EEOC

170990490

~~Pennsylvania Human Relations Commission~~  
State or local Agency, if any

and EEOC

NAME (Indicate Mr., Ms., Mrs.)

Ms. Barbara E. Varner

HOME TELEPHONE (Include Area Code)

(717) 938-9858

STREET ADDRESS

CITY, STATE AND ZIP CODE

DATE OF BIRTH

5 Maple Drive, Etters, PA 17319

01/18/49

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE,  
STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME Court of Common Pleas of  
Cumberland County

NUMBER OF EMPLOYEES, MEMBERS

Cat D (501+)

TELEPHONE (Include Area Code)

(717) 240-6265

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

One Courthouse Square, Carlisle, PA 17013

041

NAME

TELEPHONE NUMBER (Include Area Code)

STREET ADDRESS

CITY, STATE AND ZIP CODE

COUNTY

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))

☐ RACE ☐ COLOR ☒ SEX ☐ RELIGION ☐ NATIONAL ORIGIN  
☒ RETALIATION ☒ AGE ☐ DISABILITY ☐ OTHER (Specify)

DATE DISCRIMINATION TOOK PLACE

EARLIEST

LATEST

11/20/96

5/26/98

☒ CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s))

See attached sheets.

Notarial Seal  
Jennifer L. Garner, Notary Public  
Camp Hill Boro, Cumberland County  
My Commission Expires Aug. 27 2001

Barbara E. Varner  
Jennifer L. Garner

Notarial Seal  
Jennifer L. Garner, Notary Public  
Camp Hill Boro, Cumberland County  
My Commission Expires Aug. 27 2001

☒ I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the foregoing is true and correct.

NOTARY (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(Day, month, and year)

Date

Charging Party (Signature)

EEOC CHARGE NO.

The Particulars Are:

I. On December 4, 1989 I was hired by Cumberland County as a Caseworker. On February 7, 1995, I was transferred as a Probation Officer I to the Cumberland County Probation Department. On or about November 20, 1996 to the present, I have been harassed and sexually harassed by S. Gareth Graham, Supervisor, and Joseph Osenkowski, Chief, more particularly as follows:

a. On or about November 20, 1996, I gave my supervisor, Mr. Graham, a social history of a female juvenile with suicidal tendencies related to premenstrual problems. Mr. Graham responded: "Jesus Christ, do I need to get a pester meter in my office?" This was said to me in front of a male co-worker. The comment was degrading and humiliating to me as a female.

b. In January, 1996, Mr. Graham indicated an interest in me sexually by giving me an inappropriate and personal birthday card and by inappropriate touching. On May 1, 1996, Mr. Graham appeared uninvited at night at my home. Mr. Graham knocked on my hotel room door requesting entrance and called my room repeatedly during a training session at Penn State October 21-23, 1996. When I showed a lack of interest in his sexual overtures, his attitude toward me became more hostile.

c. On several occasions, Mr. Graham has told me explicit stories regarding his "sexual problems" with his wife who works as a stenographer for Cumberland County Courts. For example, while traveling on a business trip with me on December 11, 1996, he discussed his wife's masturbation habits and her refusal to have sex with him. He told me he would keep a calendar of these events and threatened to "get even" with her. I suggested counseling for him and his wife. He immediately denied any need for counseling, started screaming about it, and began to drive the vehicle at a very high rate of speed which frightened me. Mr. Graham would brag about smashing his wife's figurine collection against their fireplace and destroying her birthday cake in front of his young daughters to "punish her." I felt this was a message to me that he would retaliate against me.

d. Mr. Graham has told me not to talk to another female probation officer, Kerry (Vohs) Houser, who had previously brought sexual harassment charges against Mr. Osenkowski.



EEOC CHARGE NO.

e. Mr. Graham told me that my seniority and promotional possibilities are not based on seniority alone, but on the need to "satisfy" all parties involved. He said this with a suggestive smile and while he was making other sexual innuendoes.

f. Both Mr. Graham and Mr. Osenkarski continually call attention to my gender and make inappropriate comments about other females. For example, Mr. Graham has made comments to me about how dark he believes a young female's "bush" is. On or about April 7, 1997. Mr. Osenkarski made a comment in front of me about a young female intern's breasts: that she had a nice set of "jahoobee's".

g. When I have told Mr. Graham that I do not want to hear his sexual comments and that I find the "f" word offensive, he told me that if I can't take it I can go back to doing social work (my former job).

h. When I followed the chain of command and went to Mr. Osenkarski, Mr. Graham's supervisor, to complain about the treatment, I was told by Mr. Osenkarski that he does not want to get involved. He told me that he has put his "F----- 35 years in and now Mr. Graham is in charge."

i. After I rebuffed Mr. Graham's overtures, he retaliated against me in the following manner:

1. Mr. Graham has screamed at me numerous times, most notably on occasions from December 1996 through May, 1997 and embarrassed me in front of co-workers. He physically moves toward me in an aggressive manner. On April 16, 1997, he threw wadded paper at me. He frequently points in my face, most notably in an incident February 2, 1997. He told me directly that he and Mr. Osenkarski "punish" people who do not comply with what they demand or who fall out of favor with them.

2. On April 4, 1997, in front of the entire office, with members of the public present, Mr. Graham stated loudly that I have no "f----- sense, no f----- training, and no f----- ability." On most occasions when he screams at me, he uses the "f" word in direct address to me.

3. Prior to September 9, 1996, seniority lists used total number of years employed by the county. Because I was hired while this was the policy, I was told that I would receive the benefit of this provision. New hires would get seniority only for time in

EEOC CHARGE NO.

the Probation Department. I am the only person who has not been given the benefit of county seniority. Bill Brandt (male, aged late-20's) was moved ahead of me on the seniority list although I had more county seniority time than he. In March, 1998, Mr. Brandt was promoted ahead of me. After I complained, Mr. Brandt's promotion was taken down and we both got promoted in June, 1998. I was told that Mr. Brandt is male and "would eventually have a family" so he would need the money more than me. Although other male Probation Officers (e.g. Lyle Herr, Mike Peiper, and Gary Graham) have been given the benefit of the county-wide seniority, I have not. On the posted seniority list, Mr. Brandt is still ahead of me. If another promotion becomes available, Brandt will have more seniority than me.

4. I have been accused of having lied about a delay in returning from a business trip with another female probation officer because we had to drive through fog. Although the other female confirmed the facts, we were both docked pay and subjected to restrictions not placed on the other male probation officers.

5. Male Probation Officers may leave on juvenile commitment trips at any time throughout the day. Mr. Graham has enforced an 8:00 a.m. leaving time for myself and the other female probation officers. Female Probation Officer are not subject to the same rules as the male Probation Officers.

6. I was told by Mr. Graham in January, 1997 that all divorced females are angry at men. In April, 1997, Mr. Graham told my coworkers the same thing. I am a divorced female.

II. On April 8, 1997, I complained about Mr. Graham and Mr. Osenkowski to Dan Hartnett, Cumberland County Personnel and Human Resources Director. I made specific reference to harassment and sexual harassment. On April 25, 1997, I wrote an extensive memorandum entitled "Harassment/Discrimination in Cumberland County Probation Department." Although I was told that an internal investigation had been done, the recommendation that some action be taken against Mr. Graham was rejected by President Judge Harold Sheely. I believe that this is because of his past friendships with Mr. Graham. I was told by Judge Sheely that Mr. Graham and Mr. Osenkowski have been "asshole buddies" for years. Judge Sheely accused me of having an affair with Mr. Graham, which is totally untrue. Although Mr. Graham received a short "disciplinary" suspension, I believe that he lost no pay. No one dealt specifically with the issues of harassment or sex discrimination. Mr. Graham has threatened to retaliate against persons who were interviewed during the "investigation."

## EEOC CHARGE NO.

a. I continue to be treated differently because of my sex, female, and I am in constant fear of reprisal and physical harm.

b. On October 27, 1997, during a training session on Sexual Harassment in the Workplace, Mr. Graham positioned himself in a manner that allowed him to glare and stare at me with narrowed eyes.

c. On November 3, 1997, I was walking toward the courthouse. Mrs. Graham exited her car and walked toward me, stopping in the street. She stood at the curb glaring at me with narrowed eyes and clenched teeth and remained until I was directly in front of her. I felt physically threatened.

d. On December 4, 1997, I was waiting outside the courtroom when Mrs. Graham walked toward me narrowing her eyes and clenching her teeth.

e. On several occasions, Mr. Graham has walked directly at me, only moving aside when he was a few steps away. I am afraid for my physical safety as long as Mr. Graham is permitted to be near me.

f. On March 3, 1998 I was walking from my parking lot to the Courthouse. As I walked around the corner of a building, I was confronted by Mr. and Mrs. Graham. Mrs. Graham was on the outside of the street. I attempted to walk around her when she forcefully bumped into me.

g. On May 22, 1998, I was exiting my car in the parking lot. Mrs. Graham was parking her car behind mine. She walked up to within two or three steps behind me and stayed in that position for the entire walk into the building.

III. I have been discriminated against because of my age (Date of Birth: January 18, 1949) in that Mr. Graham informed me that he had no plans to hire any more "middle aged females."

IV. I complained on June 4, 1997, December 23, 1997, February 4, 1998, March 3, 1998, March 31, 1998, and June 1, 1998 in writing and numerous times verbally about continued threatening actions by Mr. and Mrs. Graham and continued discrimination to the Personnel and Human Relations Director. After these complaints, I have been retaliated against.

EEOC CHARGE NO.

a. President Judge Sheely asked me in December, 1997 why I went to the Personnel Director with my complaints and suggested that I should not continue to make my complaints to Personnel. He told me that I would just have to "put up with it."

b. After my complaints about Mrs. Graham, on May 26, 1998 I was restricted by now President Judge George Hoffer from going into the probation offices in the third floor east wing of the courthouse, a location where I need to be to do my job. To the best of my knowledge, Mrs. Graham has not been restricted in her movements.

c. In March, 1998, Mr. Graham was moved to the Adult Probation Department and Mr. Thomas Boyer became the new supervisor of the Juvenile Probation Department, joined later by Mr. Henry Thielmann as a second supervisor. I continue to be treated differently from other male probation officers.

V. I have been suffering physical symptoms of stress which have caused me to seek medical treatment. I have sought counseling in order to try to cope with the constant tension in the workplace. I am embarrassed and humiliated by the way I have been treated by my employer, particularly after making complaints which were confirmed by my co-workers.

Exh B

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
INTAKE RECORD

CHARGE NUMBER: 170990490

CHARGING PARTY INFORMATION:

Varner, Barbara E (Ms.)  
5 Maple Drive  
Etters, PA 17319

SOC SEC #: 000-00-0000  
BIRTHDATE: 01181949  
COUNTY : York

GENDER: F  
RACE : O  
ORIGIN: O

(H) (717) 938-9858  
(W) (717) 240-6265

JOB TITLE:  
EXCLUDE CP NAME FROM 131/131a: N

RESPONDENT INFORMATION:

Common Pleas  
One Courthouse Square  
Carlisle, PA 17013

R TYPE : E  
R COUNTY : 041  
SMSA CODE: 3240  
SIC CODE : 921  
FUNCTION :  
EEO ID# :  
# EMPLOY : Cat A (15-100)

(717) 240-6265

SUPERVISOR NAME :

SUPERVISOR TITLE:

RECEIVED DATE: 010799  
THIS OFF DATE: 010799  
DOV, FIRST : 112096  
DOV, LAST : 052698

RCVD OFFICE: 170  
ACCT OFFICE: 170  
FEPA OFFICE: 17F  
FEPA CHG NO:

INTAKE STAFF: HG  
INTAKE UNIT : 2  
INQUIRY DATE: 010799

STATUTE: TA

BASIS : GP OA OR

ISSUES : P3 S4

PROC TYPE: O

CONT. ACT: N

SOURCE : A

FEDERAL XFER:

FEDERAL CODE:

RESPONDENT CONTACT INFORMATION:

Hoffer, George E (Mr.)  
President/Judge  
Common Pleas Ct Of Cumberland Cty.  
One Courthouse Square  
Carlisle, PA 17013  
Phone: (717) 240-6265

CHARGING PARTY CONTACT INFORMATION:

ACTION CODE:

B4 DATE:	OFFICE:	BY:	TO :	RSN:	
B5 DATE:	OFFICE:	BY:	TO :	RSN:	
B6 DATE:	OFFICE:	BY:	CAT:	CT1:	NEP:
G1 DATE:	OFFICE:	BY:	STF:		
A0 DATE:	OFFICE:	BY:	TO :	RSN:	

DATA COMPLETE: Y

DATE UPLOADED: 011499

COMMENTS:

910007

Exh C

## CASE LOG

CHARGE NO.	RESPONDENT	CHARGING PARTY
DATE	ACTION	ENTERED BY
12/14/98	Draft charge sent to CP	
	<del>CHARGE DOCKETED</del>	
1/7/99	rec'd. signed charge Docketed	
1/13/99	131 to R without charge	
2/22/99	rec'd. FAX from CP	
2/26/99	131 to R with charge & RFEs (2) & Request for Cos. Statement	
note:	this is a replacement charge for 170981689, which was docketed vs. incorrect R & has been dismissed for LT.	
	Charge package forwarded to CR/TIU	
	Charge package received in CR/TIU	
	Open charges against Respondent: NONE YES (see form)	
1/13/99 2/26/99	131/131A forwarded to Respondent	
2/26/99	CP/CP Attorney letter forwarded	
	212A forwarded to State/Local Agency	
2/26/99	Forwarded to Enforcement Manager <u>AVH</u>	B4
	Received by Enforcement Manager	B5
3/3/99	Forwarded to Enforcement Supervisor <u>T-2</u>	G1
	Assigned to Investigator _____	G1

610005

Exh D

Chairperson  
ROBERT JOHNSON SMITH  
Vice-Chairperson  
RAQUEL OTERO de YIENGST  
Secretary  
GREGORY J. CELIA, JR.  
Executive Director  
HOMER C. FLOYD  
Regional Director  
KAABA BRUNSON



COMMONWEALTH OF PENNSYLVANIA  
HUMAN RELATIONS COMMISSION

Harrisburg Regional Office  
Uptown Shopping Plaza  
2971-E North Seventh Street  
Harrisburg, PA 17110-2123  
(717) 787-9780 (Voice)  
(717) 787-7279 (TT)

COMMISSIONERS  
JOSEPH J. BORGIA  
W.D. CHRISNER III  
CARL E. DENSON  
ALVIN E. ECHOLS, JR.  
RUSSELL S. HOWELL  
ELIZABETH C. UMSTATTD  
SYLVIA A. WATERS  
DANIEL D. YUN

Writer's Direct Dial:

June 16, 1997

Barbara E. Varner  
5 Maple Drive  
Etters, PA 17319

Dear Ms. Varner:

This will confirm our telephone conversation of June 16, 1997 where we discussed your filing a complaint against Cumberland County Juvenile Probation. As a Juvenile Probation Officer, you are an Officer of the Court and enforce the decisions of the Cumberland County Court of Common Pleas under the direction of President Judge Sheely.

As I explained, we do not have jurisdiction over the employees of the various court systems of Pennsylvania due to a court ruling. I suggested you should contact the EEOC and provided their address and telephone number. You do plan to contact them.

Per your request, I am returning your questionnaires and letter that you initially sent to the Commission. The Commission has retained the originals and I am sending you copies of them. I hope this is satisfactory.

I am sorry for any inconvenience the delay in stating our lack of jurisdiction has caused you.

Sincerely,

A handwritten signature in cursive script, reading "Joanne Hetzel".  
Joanne Hetzel  
Human Relations Representative

910065



[illegible]

910157

## CASE LOG

CHARGE NO.	RESPONDENT	CHARGING PARTY
DATE	ACTION	ENTERED BY
170981689		
	Signed Charge Received	
	DOCKETED	
	See previous Case log for prior actions	
9/28/98	131 to R without charge	
11/3/98	131 to R with charge & RFE & Request for Pos. Statement	
3/18/99	Case reviewed — DISMISS	
	CP is not employed by Resp.	QJH
9-22-98	Charge package forwarded to CR/TIU	Jeg
9/28/98	Charge package received in CR/TIU	Jim
	Open charges against Respondent: NONE YES (see form)	
9/28/98	131/131A forwarded to Respondent	Jim
11/3/98	CP/CP Attorney letter forwarded (to CP & CP's Atty)	
	212A forwarded to State/Local Agency	
11/3/98	Forwarded to Enforcement Manager Aut	
	Received by Enforcement Manager	
11/9/98	Forwarded to Enforcement Supervisor T-2	
	Assigned to Investigator	

910156

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
INTAKE RECORD

CHARGE NUMBER: 170981689

CHARGING PARTY INFORMATION:

Varner, Barbara E (Ms.)  
5 Maple Drive  
Etters, PA 17319

SOC SEC #: 167-40-2014  
BIRTHDATE: 011849  
COUNTY : York

GENDER: F  
RACE : W  
ORIGIN: O

(H) (717) 938-9858  
(W) (717) 240-6524

JOB TITLE: Probation Officer  
EXCLUDE CP NAME FROM 131/131a: N

RESPONDENT INFORMATION:

Cumberland County  
One Courthouse Square, 3rd Flr  
Carlisle, PA 17013

R TYPE : G  
R COUNTY : 041  
SMSA CODE: 3240  
SIC CODE : 922

(717) 240-6265

FUNCTION :  
EEO ID# :  
# EMPLOY : Cat D (501 +)

SUPERVISOR NAME : President Judge Sheely  
SUPERVISOR TITLE: Dan Hartnett, Person'l Dir

RECEIVED DATE: 082498  
THIS OFF DATE: 082498  
DOV, FIRST : 071197  
DOV, LAST : 052698

RCVD OFFICE: 170  
ACCT OFFICE: 170  
FEPA OFFICE: 17P  
FEPA CHG NO:

INTAKE STAFF: PW  
INTAKE UNIT : 1  
INQUIRY DATE: 061897

STATUTE: TA  
BASIS : GF OA  
ISSUES : S4

PROC TYPE: O  
CONT. ACT: N  
SOURCE : A

FEDERAL XPER:  
FEDERAL CODE:

RESPONDENT CONTACT INFORMATION:

Hartnett, Dan (Mr.)  
Personnel & H. R. Director  
Cumberland County  
One Courthouse Square, 3rd Flr  
Carlisle, PA 17013  
Phone: (717) 240-6265

CHARGING PARTY CONTACT INFORMATION:

Spidle, Richard (Son) (Mr.)  
211 East Portland Street  
Mechanicsburg, PA 17055  
Phone: (717) 795-1877

ACTION CODE:

B4 DATE:	OFFICE:	BY:	TO :	RSN:	
B5 DATE:	OFFICE:	BY:	TO :	RSN:	
B6 DATE:	OFFICE:	BY:	CAT:	CT1:	NEP:
G1 DATE:	OFFICE:	BY:	STF:		
A0 DATE:	OFFICE:	BY:	TO :	RSN:	

DATA COMPLETE: Y  
DATE UPLOADED: 082898

COMMENTS:

910158

Exh F



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Philadelphia District Office

The Bourse, Suite 400  
21 S. Fifth Street  
Philadelphia, PA 19106-2515  
PH: (215) 451-5800  
TDD: (215) 451-5814  
FAX: (215) 451-5804/5767

Barbara Varner  
5 Maple Drive  
Etters, PA 17319

Charging Party,

CHARGE NO.: 170981689

Cumberland County  
One Courthouse Square, 3<sup>rd</sup> floor  
Carlisle, PA 17013

Respondent.

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the above cited charge.

All requirements for coverage have been met. Charging Party alleged that Respondent discriminated against her by subjecting her to sexual harassment and later retaliated against her for protesting the harassment in violation of Title VII of the Civil Rights Act of 1964, as amended and further harassed her because of her age, 48 in violation of the Age Discrimination in Employment Act.

Charging Party was hired on December 4, 1989, as a Caseworker and became a Probation Officer I on February 7, 1995. Charging Party currently works in Respondent's Juvenile Probation Division.

Charging Party alleges that between January 1996 and December 1996, she was subjected to sexual harassment by her former supervisor. The sexual harassment consisted of lewd comments such as "Jesus Christ, do I need to get a peter meter in my office," and descriptions of his wife's masturbation habits as well as inappropriate touching. During this period, Charging Party first protested these actions to the alleged harasser who told her to leave if she was uncomfortable with his demeanor, and then to the harasser's supervisor, who informed her that he was not going to address the problem because he had no intentions of jeopardizing his position with Respondent.

910173

From December 1996 through May 1997, Charging Party was subjected to retaliatory treatment by the harasser, and indirectly by his supervisor. Her supervisor began to belittle her and yell at her in front of staff as well as in full view of his supervisor.

Charging Party submitted a formal complaint to Personnel on April 8, 1997. The former Judge reprimanded the harasser in July 1997, by suspending him but allowed him to remain in the department. The supervisor was demoted by the new judge in the Spring of 1998.

Charging Party continues to be subjected to retaliatory treatment by management. Recently Respondent offered to give Charging Party a position she had requested, provided she rescind her charges against Respondent. Charging Party refused and was informed that her application could not be seriously considered because of the charges she filed against Respondent.

Charging Party alleges three other issues: denial of seniority due to her previous complaints of harassment, intimidation by the harasser's wife, denial of access to parts of the building where the alleged harasser's wife worked and age discrimination in the form of derogatory comments about age which the supervisor made in Charging Party's presence.

Respondent agrees that in March 1998, Charging Party's supervisor was removed from his position by the new judge. Respondent admitted that Charging Party accused the harasser's wife of harassment, but does not believe the wife's actions were equivalent to harassment. Respondent asserts Charging Party is not restricted in her movements.

Regarding the seniority issue, Respondent asserted that Charging Party's alleged denial of seniority was the result of a reorganization and was not intended to effect Charging Party's seniority.

Witness testimony confirms that Charging Party was subjected to sexual harassment and hostile treatment thereafter by her supervisor.

Regarding the move to another position, Respondent has not officially commented on Charging Party's assertions, but maintains that the best candidate, suited for the position, will be selected. There is evidence that Respondent stated that Charging Party's obtaining the position is contingent upon her dropping the pending charges.

Based on the foregoing, there is evidence to show that Charging Party was a victim of sexual harassment, and was later subjected to retaliatory treatment in the form of demeaning treatment in front of staff, as well as denial of change in position. There is no evidence to suggest that any of this treatment was motivated by age discrimination.

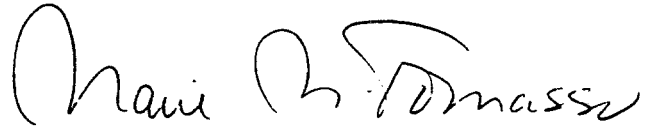
Upon finding that there is reason to believe that violations have occurred, the Commission attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter. The confidentiality provisions of the statute and Commission Regulations apply to information obtained during conciliation.

If the Respondent declines to discuss settlement or when, for any other reason, a settlement acceptable to the office Director is not obtained, the Director will inform the parties and advise

them of the court enforcement alternatives available to aggrieved persons and the Commission.

A Commission representative will contact each party in the near future to begin conciliation.

On Behalf of the Commission,

A handwritten signature in cursive script, appearing to read "Marie M. Tomasso", written over a horizontal line.

Marie M. Tomasso  
District Director

September 15, 2000  
DATE

Exh 9

*Law Offices of*  
**DEBRA K. WALLET**  
24 N. 32nd STREET  
CAMP HILL, PA 17011  
PHONE: (717) 737-1300  
FAX: (717) 761-5319

August 7, 1998

Pearlene M. Williams,  
Investigator Support Assistant  
U.S. Equal Employment Opportunity Commission  
The Bourse, Suite 400  
21 S. Fifth Street  
Philadelphia, PA 19106-2515

Re: Barbara E. Varner

Dear Ms. Williams:

Thank you for speaking with me yesterday about the draft charge. Enclosed are some corrections and additions which my client and I have prepared. It was easier to retype it in my office than to write on your draft. I understand that you will have to send this back to my client after it has been retyped on the charge form.

Please note that "Cumberland County" is the employer.

I have had my client sign the form requesting dual filing which is enclosed. You know, however, that this is where we started and the PHRC declined jurisdiction.

Please call me if you have questions or if I can assist in any way..

Sincerely yours,

*Debra K. Wallet*

Debra K. Wallet

DKW/s  
Encl. (2)  
cc: Barbara E. Varner

910191